

Town of Amherst
Zoning Board of Appeals

PROJECT APPLICATION REPORT

Property Owner: Ian Walsh
21 Kendrick Place
Amherst, MA 01002

Nature of request: Request a special permit to change the use at 21-23 Kendrick Place from an owner occupied two-family dwelling to a non-owner occupied two-family dwelling, under Section 3.3211 and Section 10.38 of the Zoning Bylaw.

Project address: 21-23 Kendrick Place

Map/parcel: 14A/241

Zoning: General Residence (R-G) Zone

Board members: Mark Parent - Chair, Joan O'Meara, Steve Judge

Staff members: Brandon Toponce, Senior Planner and Maureen Pollock, Associate Planner

BACKGROUND

Ian Walsh is the owner of the two family dwelling located at 21-23 Kendrick Place, and would like to convert the owner occupied two family dwelling into a non-owner occupied two family dwelling. The property has been a two family home for several years, and staff is unaware of when the original approval for a duplex occurred. However, appraisal cards show the home to be a two family dwelling since 1970. According to Section 3.3211 of the Zoning Bylaw a non-owner occupied duplex requires approval from the Zoning Board of Appeals. Mr. Walsh will not be making alterations to the property or structure and will only be modifying the owner occupied requirement.

ZONING BYLAW REVIEW, SECTION 3.3211

Definitions

In Section 12.15, a two family detached dwelling unit is defined as the following:

A single residential building containing two (2) dwelling units, arranged vertically one above the other, or horizontally side by side, each with a separate entrance.

The Bylaw gives two options for a duplex, owner occupied and non-owner occupied. An owner occupied duplex requires one or both of the dwelling units serve as the principal residence of one or more owners of the property (Section 3.3210). For a non-owner occupied, one or both dwelling units are rented and neither unit serves as the principal residence of one or more owners of the property (Section 3.3211).

Criteria to be met for a non-occupied duplex:

- No *dwelling unit* under this use category may be occupied by a total of more than (4) four unrelated persons
 - **Staff Response:** According to the floor plan provided by Mr. Walsh, each dwelling has a total of two bedrooms.
- The granting authority must require the ongoing services of a qualified professional management company, the presence of an onsite manager or similar provisions for proper management of the rental use as a condition of approval
 - Names and contact information must be provided for the owner, and responsible rental property management entity, and at least one on-site resident
 - **Staff Response:** According to Article 4.6.9.1, Residential Rental Property, an exemption of this requirement can be found. If a property owner lives within Amherst, or 20 miles from the Amherst Town line, they can manage their own property. It is unclear where Mr. Walsh will reside, however he does work in Amherst. Mr. Walsh has provided a management plan and a complaint response plan.
 - A management plan as defined in the Rules and Regulations adopted by the Special Permit Granting Authority, must be included as an integral part of the application. Also, included must be a Response Plan describing the concrete steps to be taken by the property owner or management in response to complaints about the operation of the use of the conduct of the tenants.
 - **Staff Response:** According to the management plan provided by Mr. Walsh, all trash will be stored in a 96 gallon polycart for trash stored behind the house between the two entrances. There are recycling bins in both units stored on the back porches. Duseau Trucking will provide weekly trash and recycling pick-up service.

The front yard and back yard have grass and seasonal plantings. Crescent Moon Gardens will provide routine lawn care and seasonal cleanings; and Crossman Properties will shovel sidewalks and stairs and will plow the driveway.

The complaint response plan has been provided and indicates Mr. Walsh as the property owner and the 24 hour seven days a week contact. A phone number and email has been provided that is available to all tenants. Included in the submittal is the lease agreement between Mr. Walsh as the Lessor and all future tenants. The document identifies the obligation of the renter, specifies that only two cars are permitted per apartment, and limits on gatherings - no gatherings of over 12 people from the unit or common areas are permitted.

SECTION 10.38 SPECIFIC FINDINGS REQUIRED

The Board shall under Section 10.38 of the Zoning Bylaw, Specific Findings, make the findings required of all Special Permits, such that:

10.380 & 10.381 - *The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority; The proposal is compatible with existing Uses and other Uses permitted by right in the same District.*

- **Staff Review:** This property has been a two family dwelling for some time and appears to not be detrimental to the neighborhood. In fact, the neighborhood appears to have a mix of multifamily and single family dwellings. With Mr. Walsh adequately managing the property no negative effect should occur with not having an owner occupied home.

10.382, 10.383 & 10.385 & 10.387 - *The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features; The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians; The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features; The proposal provides convenient and safe vehicular pedestrian movement within the site, and in relation to adjacent streets, property or improvements.*

- **Staff Review:** Allowing a non-owner occupied duplex will not constitute a nuisance in the area or be a danger to abutters. The response plan provided by the applicant states Mr. Walsh as the primary contact in case of complaints or other nuisance that may be caused by the tenants.

10.384 - *Adequate and appropriate facilities would be provided for the proper operation of the proposed use.*

- **Staff Review:** Utility services are already sufficient for the property.

10.386 - *The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw.*

- **Staff Review:** The applicant provides four parking spaces on-site.

10.387 - *The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements. If the Special Permit Granting Authority deems the proposal likely to have a significantly adverse impact on traffic patterns, it shall be permitted to require a traffic impact report, and the proposal shall comply with Section 11.2437 of this Bylaw.*

- **Staff Review:** With the driveway providing four vehicles without a turn around, it is unclear how all vehicles will maneuver in and out of the driveway. Guest to the home, just as other properties in the area, may park on the public streets where allowed. There is a walkway connecting the house to the public sidewalk and a walkway connecting the driveway to the back entrance to house.

10.388 - *The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment or use.*

- **Staff Review:** This finding is not applicable to the project.

10.389 - *The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water.*

- **Staff Review:** Since the building is already existing, sewage and water connections are in use. According to the submitted Management Plan trash pickup is provided by Amherst Trucking.

10.390 - The proposal ensures protection from flood hazards as stated in Section 3.228, considering such factors as: elevation of buildings; drainage; adequacy of sewage disposal; erosion and sedimentation control; equipment location; refuse disposal; storage of buoyant materials; extent of paving; effect of fill, roadways or other encroachments on flood runoff and flow; storage of chemicals and other hazardous substances.

- **Staff Review:** The property is not found within a designated flood zone.

10.391 - The proposal protects, to the extent feasible, unique or important natural, historic or scenic features.

- **Staff Review:** This finding is not applicable to the project.

10.392 - The proposal provides adequate landscaping, including the screening of adjacent residential uses, provision of street trees, landscape islands in the parking lot and a landscape buffer along the street frontage. When a non-residential use adjoins a residential district, an uninterrupted vegetated buffer shall, to the extent feasible, be established and maintained between buildings associated with uses under this section and the nearest residential property boundaries. Where natural, undisturbed vegetation already exists on-site prior to site preparation and clearing, the majority of that vegetation may be retained and included as part of the buffer, along with the addition of such new plantings, selective removals, and other management of site plantings as are determined to be necessary to maintaining an effective year-round visual screen. See Section 11.3.

- **Staff Review:** According to the Management Plan, the front yard and back yard have grass and seasonal plantings. Crescent Moon Gardens will provide routine lawn care and seasonal cleanings.

10.393 - The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting, through use of cut-off luminaires, light shields, lowered height of light poles, screening, or similar solutions. Except for architectural and interior-lit signs, all exterior site lighting shall be downcast and shall be directed or shielded to eliminate light trespass onto any street or abutting property and to eliminate direct or reflected glare perceptible to persons on any street or abutting property and sufficient to reduce a viewer's ability to see. All site lighting, including architectural, sign, and parking lot lighting, shall be kept extinguished outside of those business hours established under an approved site management plan, except for lighting determined to be necessary for site security and the safety of employees and visitors.

- **Staff Review:** According the Management Plan, there is one motion detected spot light fixture on the front of the garage. The fixtures face downward and feature 100 watt bulbs. There are two switched wall fixtures on the front porch by the entrance, one for each unit.

10.394 - The proposal avoids, to the extent feasible, impact on steep slopes, floodplains, scenic views, grade changes, and wetlands.

- **Staff Review:** This finding is not applicable to the project.

10.395 - The proposal does not create disharmony with respect to the terrain and to the use, scale and architecture of existing buildings in the vicinity which have functional or visual relationship thereto. Within the B-L, B-VC, B-N, COM, OP, LI and PRP Districts, and any residential zoning
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district where the project in question occurs within the boundaries of a National Historic Register District, the Special Permit Granting Authority shall, if it deems the proposal likely to have a significant impact on its surroundings, be permitted to use the design principles and standards set forth in Sections 3.2040 and 3.2041, 1) through 9) to evaluate the design of the proposed architecture and landscape alterations. Within the B-G and abutting B-L districts, and for any Town project within any district, the provisions of Section 3.20, Design Review, shall remain in effect.

- **Staff Review:** This finding is not applicable to the project.

10.396 - The proposal provides screening for storage areas, loading docks, dumpsters, rooftop equipment, utility buildings and similar features.

- **Staff Review:** According the Management Plan, the 96 gallon polycart for trash is stored behind the house between the two entrances and the recycling bins for both units are stored on the back porches.

10.397 - The proposal provides adequate recreational facilities, open space and amenities for the proposed use.

- **Staff Review:** The open space on the property has already been established.

10.398 - The proposal is in harmony with the general purpose and intent of this Bylaw, and the goals of the Master Plan.

- **Staff Review:** The proposed non-owner occupied duplex is in harmony with the zoning Bylaws in relation to Section 3.3210 and all other applicable standards pertaining to a Special Permit Review.

CONCLUSION

In reviewing the proposed non-owner occupied duplex, staff believes all necessary information has been provided. The building and site are not changing from what is currently existing, and with the applicant providing the proper management plan and Complaint Response Form, the impact appears to be minimal.

POSSIBLE CONDITIONS OF APPROVAL

1. Allow the non-owner occupied duplex for the property located at 21-23 Kendrick Place, as stated in the Project Application Report dated, July 26, 2018.
2. The approved management plan shall be followed at all times and any changes to this plan shall return to the Zoning Board of Appeals for approval.
3. Each dwelling unit shall be provided with two parking stalls as indicated in the lease agreement.
4. All onsite lighting shall face downward and be shielded as to not be directed in to the sky or onto adjacent properties.
5. The applicant shall submit a completed Town of Amherst Complaint Response Plan to Inspection Services before a Certificate of Occupancy is issued; it shall be continually updated with current information.
6. This permit shall expire upon change of ownership to the property
7. A Rental Permit shall be issued prior to occupancy. Filing of the Residential Rental Property Permit shall be valid at all times and conspicuously posted and maintained within the premises in a Common Area or area as is necessary to be visible to tenants and inspectors.

8. The approved Management Plan and Response Plan shall be followed at all times, any modification shall come before the Zoning Board of Appeals at a public meeting.
9. All rooms to be used as labeled in the submitted Proposed First Floor Plan, Proposed Second Floor Plan, and Proposed Basement Plan.
10. The street number #21-23 shall be posted outside of the house with reflective signage and shall be visual from the public right-of-way from both directions. The street number signage shall be maintained at all times.
11. Short term renting, including Airbnb rentals shall not be allowed at this property.
12. No more than four (4) unrelated individuals shall occupy each unit.

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